No. 80-

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980

DONALD WAYNE THOMAS,

Petitioner,

-against-

STATE OF GEORGIA,

Respondent.

PETITIONER'S APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR PETITIONER

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The opinion of the Supreme Court of Georgia is reported as follows at 266 S.E.2d 499:

THOMAS

v.

The STATE.

No. 36046.

Supreme Court of Georgia.

Argued March 12, 1980.

Decided April 23, 1980.

Defendant was convicted on a jury verdict before the Fulton Superior Court, Weltner, J., of murder and was sentenced to death, and he appealed. The Supreme Court, Marshall, J., held that: (1) evidence was sufficient to support conviction; (2) trial court did not err in excusing jurors who were irrevocably committed before the trial began to vote against the death penalty regardless of the facts and circumstances that might emerge in the course of the proceedings; (3) death qualification voir dire question did not violate defendant's right to an impartial jury and was not unconstitutional; (4) defendant was not put to trial while still under outstanding order of incompetency; (5) defendant waived his right to appeal any error in trial court's instruction to the jury to scan with care any incriminating statements made by witness; and (6) evidence supported jury's finding that the murder was outrageously and wantonly violent and inhuman in that it involved torture and depravity of mind so as to support imposition of the death penalty.

Judgment affirmed.

Hill, J., filed concurring opinion.

1. Criminal Law ⇐742(1)

Credibility of witnesses is matter left to the jury. Code, § 38-1805.

2. Homicide ⇐250

Evidence, viewed in the light most favorable to the verdict, supported finding by rational trier of fact of essential elements of crime of murder beyond a reasonable doubt.

3. Jury ⇐108

In prosecution for murder, trial court did not err in excusing jurors who were irrevocably committed before the trial began to vote against the death penalty regardless of the facts and circumstances that might emerge in the course of the proceedings. Code, § 59-806, subd. 4.

4. Jury ⇐131(8)

In prosecution for murder, "death qualification voir dire question" did not violate defendant's right to impartial jury on ground that it excluded identifiable segment of the community. Code, § 59-806, subd. 4.

5. Jury ⇐84

Statute providing for "death qualification voir dire question" is not unconstitutional on the ground that it does not meet constitutional standards of specificity and clarity in determining view of potential juror toward the death penalty. Code, § 59-806, subd. 4.

6. Criminal Law ⇐1213

Georgia death penalty statute is not unconstitutional.

7. Witnesses ⇐306

Privilege against self-incrimination is that of the person under examination as a witness and is intended for his protection only; defendant on trial had no standing to raise the issue.

8. Witnesses ⇐296

Witness cannot refuse to testify relative to material matters concerning crime committed by member of his family on basis that his answer would bring disgrace, infamy, or public contempt upon him or his family. Code, § 38-1205(a).

9. Mental Health ⇐6

Where, in response to a special plea of insanity, defendant was examined by two psychiatrists who tendered conflicting reports, defendant was then transferred for examination by hospital staff by the court which stated that the reason for the transfer was that defendant might be presently incompetent, and doctors at state hospital, after examining the defendant, certified his competency to stand trial, defendant was not put to trial for murder while still under outstanding order of incompetency.

10. Criminal Law ⇐1137(1)

Where defense counsel requests giving of certain jury charge but agrees to trial judge's giving of another charge in lieu thereof, any error in the charge given is in effect induced and cannot be complained of on appeal.

11. Criminal Law ⇐1137(1)

Defendant would not be permitted to assert on appeal error in jury instruction, where trial judge informed defense counsel that he would instruct the jury to scan with care any incriminating statements made by witness, but the term "confession" would not be used in the jury instructions, and defense counsel agreed to the trial judge's giving of this modified version of defendant's requested charge.

12. Criminal Law ⇐1206(2)
Homicide ⇐354

Evidence which showed brutal strangulation murder of nine-year-old victim who weighed less than 60 pounds and admission by defendant to witness that defendant had killed the child by beating him with a stick and choking him to death supported jury's finding beyond a reasonable doubt that the murder was outrageously and wantonly vile and inhuman in that it involved torture and depravity of mind, so as to support imposition of the death penalty; sentence to death was not excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. Code, §§ 27-2534.1(b)(7), 27-2537(c)(1-3).

Jack Dorsey, Atlanta, for appellant.

Lewis R. Slaton, Dist. Atty., Carole E. Wall, Asst. Dist. Atty., Arthur K. Bolton, Atty. Gen., W. Davis Hewitt, Asst. Atty. Gen., for appellee.

MARSHALL, Justice.

Donald Wayne Thomas, the appellant, was convicted in Fulton County Superior Court of the April 19, 1979, murder of Dewey Baugus, a nine-year-old child. He was sentenced to death, and this is his appeal.

From the evidence introduced at trial, the jury was authorized to find the following facts:

On April 11, 1979, Dewey Baugus and a playmate left his mother's home on Primrose Circle in Atlanta to go to a ball game. After the game, the two children separated to return to their respective homes in the early evening darkness. This was the last time the victim was seen alive.

The appellant, a 19-year-old male, lived at a rooming house on Primrose Circle. Linda Cook, the appellant's girlfriend, had stayed with him for approximately a week during the time in question. The appellant had kept her locked in the room when he was not there, with a bucket he provided as her only toilet facility. Linda Cook testified that when the appellant returned to the room on Friday, April 13, she noticed that he had a lot of blood on the front of his pants. The appellant took her to the railroad tracks behind Primrose Circle and showed her the body of the victim, lying face down, and told her that he had killed the child by beating him with a stick and choking him. In her presence, the appellant rolled the body over. Telling her that he had to make sure that he was dead, the appellant then jumped on the neck of the victim. Thereafter, he threw the victim's body in the bushes. Thereafter, they returned to the room, where the appellant removed his pants and hid them behind the house. That same day, the appellant, again in Linda Cook's presence, admitted the murder to his stepfather, Enzor Lowe. However, his stepfather testified that he did not believe him, because the appellant was grinning about it.

On April 19, 1979, Calvin Banks discovered the body of the victim when he took a shortcut on his way back from applying for a job at the Dolly Madison Cake Co. When the body was discovered, it was partially decomposed, and the pants the victim was wearing were pulled down to mid-thigh level.

Sometime later, after she had stopped staying with the appellant, Linda Cook contacted the authorities and related what had occurred. She was charged with concealing a death and placed in juvenile detention. She pointed out to the authorities where the appellant had discarded his pants, and they were recovered. Crime Laboratory tests confirmed that the blood on the appellant's pants was human, International Type B. The blood type of the victim could not be established due to decay.

Autopsy results showed the cause of death as asphyxiation, and that numerous post- and ante-mortem bruises were on the body.

[1] In enumerations of error 1, 2 and 10, the appellant urges the general grounds. He argues that the evidence does not support the verdict in that the evidence was circumstantial and did not exclude every reasonable hypothesis save the guilt of the accused. However, the jury was fully charged on circumstantial evidence and the reasonable-hypothesis rule pursuant to Code § 38-109. We do not find from the evidence, or from the lack of evidence, an hypothesis pointing to the innocence of the accused. *Douthit v. State*, 239 Ga. 81(1), 235 S.E.2d 493 (1977). See *Hawes v. State*, 240 Ga. 327(3), 240 S.E.2d 833 (1977); *Corn v. State*, 240 Ga. 130(5), 240 S.E.2d 694 (1977). The credibility of witnesses is a matter left to the jury. Code § 38-1805; *Turner v. State*, 235 Ga. 826(1), 221 S.E.2d 590 (1976).

[2] We find that the evidence, viewed in the light most favorable to the verdict, supports a finding by a rational trier of fact of the essential elements of the crime of murder beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *Patrick v. State*, 245 Ga. 417, 265 S.E.2d 553 (1980); *Fleming v. State*, 236 Ga. 434, 224 S.E.2d 15 (1976).

[3] 2. The appellant contends in his third and eighth enumerations of error that the trial court erred in excusing jurors who were conscientiously opposed to the death penalty and in overruling the appellant's motion to "strike or quash" the Georgia statute providing for death-qualification voir dire questions (Code Ann. § 59-806(4)). We do not agree. It is clear from the voir dire examination that the jurors excused were "irrevocably committed before the trial began to vote against the death penalty regardless of the facts and circumstances that might emerge in the course of the proceedings." *Witherspoon v. Illinois*, 391 U.S. 510, 88 S.Ct. 1770, 20 L.Ed.2d 776 (1968); *Davis v. Georgia*, 429 U.S. 122, 97 S.Ct. 399, 50 L.Ed.2d 339 (1977); *Corn v. State*, 240 Ga. 130, 240 S.E.2d 694, supra; *Ward v. State*, 239 Ga. 205, 236 S.E.2d 365 (1977).

[4] The appellant's assertion that the "death qualification voir dire question" (Code Ann. § 59-806(4)) violates the defendant's right to an impartial jury in that it excludes an identifiable segment of the community, has been raised numerous times before this court, and in each instance has been rejected. *Collins v. State*, 243 Ga. 291, 253 S.E.2d 729 (1979); *Corn v. State*, 240 Ga. 130, 240 S.E.2d 694, supra; *Douthit v. State*, 239 Ga. 81, 235 S.E.2d 493, supra; *Porter v. State*, 237 Ga. 580, 229 S.E.2d 384 (1976).

[5] The appellant's contention that Code Ann. § 59-806(4) is unconstitutional in that it does not meet the constitutional standards of specificity and clarity in determining the view of the potential juror toward the death penalty, is clearly without merit, as the statute must be construed in light of the applicable case law. *Witherspoon v. Illinois*, supra. See *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976).

[6] 3. The constitutionality of the Georgia death penalty statute has been upheld by the Supreme Court of the United States and by this court each time it has been attacked on constitutional grounds. *Collins v. State*, 243 Ga. 291, 253 S.E.2d 729, supra, and cits. The appellant's ninth enumeration of error is without merit.

[7, 8] 4. The appellant made a motion for the court in camera to inform witness Enzor Lowe of his privilege not to testify as to matters which may incriminate himself or which shall tend to bring infamy or disgrace or public contempt upon himself or any member of his family. Code § 38-1205(a). The appellant argues that, since the witness was the stepfather of the appellant, the stepfather's testimony as to the murder would bring infamy upon a member of his household and the court should have instructed him in this regard. However, this enumeration is without merit for two reasons. First, the privilege against self-incrimination is that of the person under examination as a witness, and is intended for his protection only; the defendant on trial has no standing to raise the issue. *Lively v. State*, 237 Ga. 35, 226 S.E.2d 581 (1976) and cits. Second, the privilege would not apply to the testimony of the witness in this case, in that a witness cannot refuse to testify relative to material matters concerning a crime committed by a member of his family on the basis that his answer would bring disgrace, infamy or public contempt upon him or his family. *Brooks v. State*, 233 Ga. 524(2), 212 S.E.2d 355 (1975).

[9] 5. The appellant complains that he was put to trial while still under an outstanding order of incompetency. However, the record does not support such a contention. In response to a special plea of insanity, the appellant was examined by two psychiatrists, who tendered conflicting reports. The court thereafter ordered that the appellant be transferred to the custody of the Department of Human Resources in order that he could be examined by the staff at Central State Hospital. In its order, the court did not find the appellant incompetent to stand trial, but stated that the reason for the transfer was that the appellant "may be presently incompetent." The doctors at Central State, after examining the appellant, certified his competency to stand trial. The appellant was returned to Fulton

County, tendered a plea of not guilty, and proceeded to trial without objection. The appellant's fifth enumeration of error is therefore without merit.

6. In his seventh enumeration of error, the appellant assigns error to the court's failure to charge, in the language requested, the appellant's request to charge number 12, which reads as follows: "All statements shall be scanned with care, and confessions of guilt shall be received with great caution. A confession alone, uncorroborated by any other evidence, shall not justify conviction."

The appellant did not give any statements to law enforcement authorities; nor did he testify at trial. The appellant did make certain admissions to Linda Cook and his stepfather concerning his commission of the murder, and their testimony concerning these admissions was received at trial.

[10, 11] Prior to closing argument, the trial judge informed defense counsel that he would instruct the jury to scan with care any incriminating statements made by Linda Cook, but the term "confession" would not be used in the jury instructions. Defense counsel agreed to the trial judge's giving of this modified version of defendant's request to charge number 12. Therefore, he cannot complain on appeal. Where defense counsel requests the giving of a certain jury charge, but agrees to the trial judge's giving of another charge in lieu thereof, any error in the charge given is in effect induced. Induced error cannot be complained of on appeal. *Hill v. State*, 237 Ga. 523(3), 228 S.E.2d 898 (1976).

[12] 7. *Sentence Review.* As required by Ga.L.1973, p. 159 et seq. (Code Ann. § 27-2537(c)(1-3)) and to complete our consideration of error, we have reviewed the death sentence in this case, as we review each case in which a death sentence is imposed. We have considered the aggravating circumstance found by the jury and the evidence concerning the crime and the defendant. We find that the sentence of death was not imposed under the influence of passion, prejudice or any other arbitrary factor, and is factually substantiated.

The jury in returning the death sentence found the following statutory aggravating circumstance: That the strangling of a nine-year-old child was outrageously and wantonly vile, horrible and inhuman in that it involved torture and depravity of mind. Code Ann. § 27-2534.1(b)(7). The appellant, in his sixth enumeration of error, argues that the evidence does not support such a finding. We do not agree. The evidence shows a brutal strangulation murder of a nine-year-old child who weighed less than 60 pounds. The appellant admitted to Linda Cook that he had killed the child by beating him with a stick and choking him to death. The autopsy report showed numerous post-mortem bruises and lacerations. The appellant had a large amount of blood on the front of his pants when he returned to the room where he kept Linda Cook. The victim's pants had been partially removed and the state introduced the defendant's prior record for child molestation and assault with intent to rape during the pre-sentence hearing. Nothing could be more inhuman, depraved or outrageously vile than the killing of a helpless child under these circumstances. This child's murder certainly involved torture of the most sadistic kind. From this evidence, a rational trier of fact was authorized to find beyond a reasonable doubt that the murder was outrageously and wantonly vile and inhuman in that it involved torture and depravity of mind. *Jackson v. Virginia*, supra. See *Gates v. State*, 244 Ga. 587, 261 S.E.2d 349 (1979).

We have reviewed the trial court's instructions to the jury during the sentencing phase of the trial and find them free of the defects dealt with in *Hawes v. State*, 240 Ga. 327, 240 S.E.2d 833, supra; *Fleming v. State*, 240 Ga. 142, 240 S.E.2d 37 (1977).

In reviewing the death penalty in this case, we have considered the cases appealed to this court since January 1, 1970, in which life or death sentences were imposed. We find that the following similar cases listed in the appendix support affirmance of the

death penalty. The appellant's sentence to death is not excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

Judgment affirmed.

All the Justices concur.

APPENDIX.

House v. State, 232 Ga. 140, 205 S.E.2d 217 (1974); *Jarrell v. State*, 234 Ga. 410, 216 S.E.2d 258 (1975); *Gibson v. State*, 236 Ga. 874, 226 S.E.2d 63 (1976); *Moore v. State*, 240 Ga. 807, 243 S.E.2d 1 (1978); *Stevens v. State*, 242 Ga. 34, 247 S.E.2d 838 (1978); *Johnson v. State*, 242 Ga. 649, 250 S.E.2d 394 (1978); *Presnell v. State*, 243 Ga. 131, 252 S.E.2d 625 (1979); *Collins v. State*, 243 Ga. 291, 253 S.E.2d 729 (1979); *Bowen v. State*, 244 Ga. 495, 260 S.E.2d 909 (1979); *Brooks v. State*, 244 Ga. 574, 261 S.E.2d 379 (1979); *Gates v. State*, 244 Ga. 587, 261 S.E.2d 349 (1979); *Tucker v. State*, 244 Ga. 721, 261 S.E.2d 635 (1979); *Tucker v. State*, 245 Ga. 68, 263 S.E.2d 109 (1979); *Patrick v. State*, 245 Ga. 417, 265 S.E.2d 553 (1980).

HILL, Justice, concurring.

The defendant requested that the jury be instructed substantially in accordance with Code § 38-420 regarding "confessions." The trial court charged the jury as to "incriminating statements."

For the last 100 years, defendants have been complaining that the defendant was prejudiced by the court's charging the jury as to "confessions." *Johnson v. State*, 242 Ga. 822, 824, 251 S.E.2d 563 (Hill, J., concurring) (1979). Here the defendant requested a charge on "confessions."

While I concur in Division 6 of the majority opinion, I would go further and hold that a defendant cannot complain that the trial court charged on "incriminating statements" rather than on "confessions"; i. e., that the trial court charged that incriminating statements should be scanned with care and shall be received with great caution.

In the case at bar, the defendant's statements were more than amply corroborated by the blood on defendant's clothes and by his taking Linda Cook to view the body. I therefore concur in the judgment.

STATE OF GEORGIA, COUNTY OF FULTON.

IN THE SUPERIOR COURT OF SAID COUNTY.

THE GRAND JURORS selected, chosen and sworn for the County of Fulton, to-wit:

1. DONALD N. THOMPSON, Foreman
2. JOHN L. BRIDGES, Assistant Foreman
3. CARLENE THOMAS, Secretary
4. J.D. MABRY, Assistant Secretary
5. ~~P. B. ANDREWS~~
6. BETTY W. BANKS
7. VERDEL BARBER
8. BETTY BARRON
9. J. DAVID BERRY
10. EUGENE BIBBS
11. ETHYL SUE BIGBY
12. CHARLES WILLIAM BOROUGHS
13. RICHARD O. BOYLES
14. KATHRYN J. BROUGHTON
15. SETH DORIAN
16. ESSIE R. GARNETT
17. JAMES J. JONES
18. RICHARD R. LOWRIE, IV
19. FRANK MIDDLEBROOKS
20. MELVIN OLIVE
21 ERNEST STAFFORD
22. WALTER H. TRIPOD
23. SARAH SAMS WEAVER
24. ~~RUTH T. BRUDER (1st Alternate)~~
25. ~~BOB ANN STONE (2nd Alternate)~~

in the name and behalf of the citizens of Georgia, charge and accuse

DONALD WAYNE THOMAS

with the offense of:—

MURDER

for that said accused, in the County of Fulton and State of Georgia, on the

19th day of April, 19 79.

did unlawfully and with malice aforethought, cause the death of Dewey Baugus a human being, by choking and strangling him causing axphyxiation;-

contrary to the laws of said State, the good order, peace and dignity thereof.

LEWIS R. SLATON, District Attorney

Special Presentment. BOOK 674 PAGE 1

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

THE STATE	)	INDICTMENT NO. A-44518
VS.	)	
DONALD WAYNE THOMAS	)	ORDER

It is hereby ORDERED that a psychiatric evaluation be permitted of the Defendant, DONALD WAYNE THOMAS, who is charged with murder, at the Fulton County Jail by the Grady Memorial Hospital Psychiatric staff, for the purpose of determining whether or not he is capable of standing trial, and participating in his own defense, and, whether or not Defendant was mentally competent at the time of the alleged offense or offenses.

It is further ORDERED that a copy of the psychiatric report be made available to Robert M. Coker, Public Defender, and to the District Attorney, Carole Wall.

This 22nd day of May, 1979.

CHARLES L. WELTNER
JUDGE, S.C., A.J.C.

FILED IN OFFICE

MAY 22 1979

Martha Nolan
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY GEORGIA

BOOK 855 PAGE 530

MR

Grady Memorial Hospital

J.W. Pinkston, Jr.
Executive Director

Asa G. Yancey, M.D.
Medical Director

Weston D. Bergman, Jr.
Assistant Director
Administrative Services

Thomas L. Collier
Assistant Administrator
Hughes Spalding Pavilion

T.E. Garner, Jr.
Assistant Director
Administrative Services

Frank K. Lawlor
Assistant Director
Professional Services

Robert L. Parrish, Jr.
Assistant Director
Ambulatory Care

E.R. White
Assistant Director
Fiscal Affairs

Charles H. Wilson, Jr.
Administrator
Hughes Spalding Pavilion

Mary F. Woody, R.N.
Assistant Director
Director of Nursing

80 Butler Street, SE, Atlanta, Georgia 30303, Telephone 404 659-1212

June 4, 1979

Tr cal
6-25

The Honorable Charles L. Weltner, Judge
Fulton County Superior Court
Atlanta Judicial Circuit
136 Pryor Street, SW
Atlanta, Georgia 30303

Re: Mr. Donald Wayne Thomas

Dear Judge Weltner:

Mr. Donald Wayne Thomas, Indictment #A-44518, was evaluated on June 1, 1979 pursuant to a court order received on May 23, 1979. The following comments reflect a summary of the observations obtained during the course of the interview with Mr. Thomas. There was no additional history or background information available at the time of the evaluation.

PURPOSE OF EVALUATION: Mr. Thomas was informed that the evaluation had been requested by the court and that a summary of observations would be forwarded to the court for its potential use in the disposition of his case. In response to a question regarding his understanding of the charges against him, he stated "I-turned myself in on an assault case and they came out here and said I killed a little white boy."

MENTAL STATUS EXAMINATION: Mr. Thomas presented as an alert, rather slender black male dressed in an institutional green jumpsuit, unkempt in his appearance and exhibiting poor personal hygiene. He sat rigidly in his chair staring past the examiner and demonstrated little spontaneity in response to questions. He stated that he had no idea of the month or the day and when asked the year he acknowledged his identity and stated that "I'm in the jail, big rock jail in Atlanta." His speech was characterized by tangential to loose associations, however, he denied experiencing delusional ideations and/or perceptual distortions in the form of either auditory of visual hallucinations. His affect was markedly flattened and his mood was depressed, without evidence of overt suicidal or homicidal ideation. As the interview progressed, and he was questioned more closely regarding his current mental status, he became increasingly restless and agitated, eventually ceasing to respond to questions while rocking back and forth in the chair and rubbing his genitals with his hands. His objective judgment was determined to be significantly impaired as a result of his markedly inappropriate behavior. His insight was considered to be nil. As a result of his inability to respond to questioning, the clinical interview was terminated.

I was unable to elicit any substantial family or personal history as a result of his mental status, however the above noted observations are clearly indicative of a diagnosis of Schizophrenia. In the absence of history to the contrary, I must assume that this psychotic behavior is a manifestation of an acute process. Clinical recommendations would include the transfer of Mr. Thomas to an inpatient psychiatric facility in the interest of eliminating his psychotic symptoms. He was placed on Thorazine

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JUN 13 1979
Martha Nolan
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY GEORGIA

BOOK 861 PAGE 330
mh

50 mgs. twice a day at the close of the interview.

FORENSIC CONSIDERATIONS: Mr. Thomas appeared aware of the charges against him, however as a result of his psychotic state, he did not appear to appreciate his role in the proceedings pending before him nor was he able to communicate effectively with this examiner. It is my impression that Mr. Thomas, as a result of psychotic decompensation, is unable to actively participate in the legal proceedings against him and is so substantially impaired as a result of psychiatric symptoms as to be unable to assist his attorney in the preparation and implementation of his defense.

I am unable to offer an opinion regarding his mental status at the time of the alleged offenses, as his state of disorganization was of such a degree that he was unable to offer any coherent statements regarding the offense.

Respectfully,

Lloyd T. Baccus, M.D.
Director, Inpatient Psychiatry
Psychiatry & Law Service

LTB:reb

cc: Ms. Carole E. Wall
Asst. District Attorney

Mr. Robert M. Coker
Public Defender

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SHELDON B. COHEN, M. D.
504 PEACHTREE MEDICAL BUILDING
401 PEACHTREE STREET, N. E.
ATLANTA, GEORGIA 30308

Telephone 525-6158

August 8, 1979

Honorable Charles L. Weltner
Judge, Superior Court
Atlanta Judicial Circuit
Fulton County Courthouse
Atlanta, Georgia 30303

Re: Donald Wayne Thomas
Indictment No. A-44518

Dear Judge Weltner:

Pursuant to your order of 7 August 1979, Mr. Thomas, who is accused of murder, was seen in psychiatric consultation to determine his capacity to cooperate meaningfully with counsel and to stand trial.

Mr. Thomas was brought to my office ahead of time by two Sheriff's deputies. He sat quietly in the waiting room until I called him. He is a 19 year old, single, Negro male who apparently had been employed regularly as an unskilled laborer in a restaurant for several years.

I explained the purpose of the interview and asked him what he understood it to be and he said, "You are supposed to be a doctor and they say I am crazy, I reckon." However, he said he didn't think he was crazy. He said that he had been in jail for some time, having given himself up "for an assault case." He said that he knew he had done something wrong and he wanted to get it over with.

When asked for details of the assault charges, he said that it was over with, that it was in the past and he did not want to talk about it. When asked about murder charges, he stated that he had been in court on the assault charges and that someone telephoned the court saying that he had committed murder, that they went out and looked for the body and found it. He said the call must have been from someone who did not like him and that he did not have anything to do with this incident, that he had been in jail at the time. He continually denied knowing anything about the murder of a nine year old white boy and strongly implied that many of his difficulties were because his ex-girl friend, Linda Cook, was angry with him and would do anything to hurt him. He said this was because of urinary incontinence present for seven years and that she and others made fun of him because of this.

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DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY GEORGIA

BOOK 875 PAGE 414

He was able to give me fundamental, historical information about his mother, four brothers and his work history.

During the interview he was at times angry, negativistic and provocative; for example, smoking a cigaret in the waiting room despite a sign on the door asking people to not smoke. He initially seemed to be pretending not to understand or comprehend anything that was asked of him; for example, when asked if he would like a Coca-Cola or coffee, he looked up and said, "What is that?" Later, as he began talking and became less defensive it was quite apparent that he was very much aware of such phenomenon and he asked if he could have a piece of candy which he noted in a jar in my office.

The interview conducted by Dr. Baccus in early June showed apparently quite different behavior, so that he seemed unresponsive to simple, every day questions. He apparently was placed on a tranquilizer (Thorazene 100 mgs. daily) and this may account for the difference in manner and behavior at this time. It is of course also possible that he may have simulated more in the previous interview than he did today.

At this time I cannot arrive at either a definitive diagnosis or answer the questions as to his mental capacity to assist in his own defense and to stand trial. There is conflicting information from the Grady interview and that which I obtained today. Consequently, I would recommend extended observation at Central State Hospital in order to clarify these factors.

Thanking you for asking me to see Mr. Thomas, I am

Sincerely,

Sheldon B. Cohen

Sheldon B. Cohen, M. D.

SBC:hcm
Encl.

BOOK 875 PAGE 415

FILED IN OPEN COURT, THIS THE
25 day of June 1979
Deputy Clerk

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

THE STATE	X	
	X	CRIMINAL INDICTMENT
V.	X	
	X	NO. A-44518
DONALD WAYNE THOMAS	X	

SPECIAL PLEA OF INCOMPETENCY TO STAND TRIAL AND MOTION FOR TRANSFER OF DEFENDANT TO THE DEPARTMENT OF HUMAN RESOURCES

Now comes the Defendant above-named and files this his plea of incompetency to stand trial, and in support thereof shows the Court the following:

1.

On May 23 1979, the Honorable Charles Weltner, Judge, Fulton Superior Court, ordered that the Defendant be examined by psychiatric personnel at Grady Memorial Hospital to determine inter alia, whether or not he is competent to assist counsel in the preparation of his defense.

2.

On June 1, 1979, the Defendant was so examined and found not to be competent to assist in the preparation of his defense or thus to stand trial at this time. A copy of the report containing said finding is attached hereto as Exhibit "A".

3.

Under the provisions of Ga.L. 1977, pp. 1293, 1296, §27-1502, Ga. Code Ann., upon the filing of the within plea, it is the duty of the Court to try the issue of the Defendant's mental competency to stand trial before a special jury and if the jury finds him to be thus incompetent, to transfer the Defendant to the Department of Human Resources for evaluation and diagnosis as to the probability of his attaining mental competency to stand trial in the foreseeable future.

The District Attorney having consented to the within plea as evidenced by his signature below, Defendant moves this Honorable Court to transfer him forthwith to the Department of Human Resources for the evaluation and diagnosis provided for in §27-1502, Ga. Code Ann.

WHEREFORE, Defendant respectfully prays this Court to accept this special plea and to order his transfer to the Department of Human Resources for the above-stated purposes.

Robert M. Coker

ROBERT M. COKER
Attorney for Defendant

Consented to by:

_____

Assistant District Attorney
Fulton Superior Court
Atlanta Judicial Circuit

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IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

THE STATE) INDICTMENT NO. A-44518

VS.)

DONALD WAYNE THOMAS) ORDER

It appearing to the Court, upon psychiatric evaluation, that the Defendant may be presently incompetent to participate in his defense, it is

ORDERED that he be transferred by the Sheriff to the custody of the Department of Human Resources, as directed by the said Department of Human Resources, there to remain until return to the jurisdiction of this Court as provided by law.

This 10th day of August, 1979.

CHARLES L. WELTNER
JUDGE, S.C., A.J.C.

By consent of
District Attorney and
Defense Counsel

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AUG 10 1979

DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY GEORGIA

BOOK 875 PAGE 413

FORENSIC SERVICES DIVISION

CENTRAL STATE HOSPITAL

Milledgeville, Georgia 31062

September 24, 1979

GEORGIA DEPARTMENT OF HUMAN RESOURCES

(912) 453-4381

A 44518

Honorable Charles L. Weltner
Judge, Superior Court
Atlanta Judicial Circuit
Courthouse
Atlanta, Georgia 30303

Re: Thomas, Donald Wayne
Case No. 228,112
Fulton County
Binion 2 South

Dear Judge Weltner:

Mr. Donald Wayne Thomas was admitted to the Forensic Services Division of Central State Hospital on August 27, 1979 by Order of your Court. We understand that he is charged with Murder. Your Order states that the defendant may be presently incompetent to participate in his defense and that because of conflicting reports from two other psychiatrists, further evaluation by the court is requested.

The physical examination was unremarkable. Neurological examination including brain scan, skull series, electroencephalogram and neurological consultation are all within normal limits. All routine laboratory procedures were within normal limits. The chest x-ray was negative. Although Mr. Thomas has had vague urinary complaints, his urinalysis has been within normal limits.

On admission, Mr. Thomas was noted to be tense, anxious and nervous. His speech was logical, relevant, coherent and goal directed. However, he was somewhat guarded and did not volunteer any information. His psychomotor activity was a little decreased and he spoke in a very low tone. His affect was somewhat flat. He was partially oriented. He denied hallucinations, delusions and suicidal thoughts. Psychological testing reveals he functions in the Borderline range of intelligence. Personality testing suggests the presence of a thought disorder, which resembles that of a schizophrenic process. Based on our examination, evaluation, and information available to us, he has been given the diagnosis of Latent Schizophrenia. He gives no other history of psychiatric treatment.

Based on our examination and evaluation, we have concluded that he is aware of the charge pending against him and the possible consequences. He is able to relate to his attorney in the preparation of his defense. Therefore, we consider him competent to stand trial.

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SEP 27 1979

CLERK SUPERIOR COURT
FULTON COUNTY GEORGIA

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As to his degree of criminal responsibility, it is our opinion that he is able to distinguish between right and wrong, and was not acting under the influence of a compulsive delusion which overmastered his will to resist committing the alleged offense.

Please send a duly authorized person for him at your earliest convenience.

Very truly yours,

Jose M. Delatorre, M.D.
Medical Director
Forensic Services Division

JMD:id

cc: Honorable Lewis R. Slaton (Enclosed)
Defense Counsel (Enclosed)

BOOK 887 PAGE 34

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA	:	INDICTMENT NO. A-44518
VS.	:	MURDER
DONALD WAYNE THOMAS	:	FULTON SUPERIOR COURT

MOTION TO STRIKE AND
QUASH GEORGIA STATUTE PROVIDING
FOR DEATH QUALIFICATION VOIR
DIRE QUESTION

Now comes the defendant in the above-styled case and challenges as unconstitutional the application of Georgia Laws 1853-54, p. 87 [(Ga. Code §59-806(4)] to voir dire by the District Attorney of potential jurors in his trial. In support of his challenge, defendant states:

1.

He is charged with a capital offense and will be tried by a jury.

2.

In the course of voir dire of potential jurors, the District Attorney is expected to propound the question set forth in Georgia Laws 1853-54, p. 87 [(Ga. Code §59-806(4)], to wit:

"Are you conscientiously opposed to capital punishment?"

3.

The District Attorney is further expected to challenge for cause under Georgia Laws 1853-54, p. 87 [(Ga. Code §59-806 (4)] any potential juror who responds in the affirmative to said question.

FILED IN OPEN COURT, THIS THE
22 day of Oct, 19 79
Lara R Jacobs
Deputy Clerk

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4.

The application of the "death qualification" voir dire question found at Georgia Laws 1853-54, p. 87 [(Ga. Code §59-806(4)] violates the defendant's right to an impartial jury drawn from a cross-section of the community under the Sixth and Fourteenth Amendments to the United States Constitution and under Ga. Code §59-106, in that it excludes from the jury an identifiable segment of the community opposed to the death penalty.

5.

The application of the "death qualification" voir dire question found at Georgia Laws 1853-54 [(Ga. Code §59-806(4)] results in a jury which is biased in favor of the prosecution and therefore violates defendant's right to an impartial trial under the Sixth and Fourteenth Amendments to the United States Constitution.

6.

Because a bifurcated trial is required in capital cases under Ga. Code §27-2503(b), application of the "death qualification" voir dire question found at Georgia Laws 1853-54, p. 87 [(Ga. Code §59-806(4)] to the potential jurors before the guilt or innocence phase of the trial allows a grave possibility of prejudice which cannot be justified by any State interest, and for which there is an easily accessible alternative.

7.

Application of the "death qualification" voir dire question found at Georgia Laws 1853-54, p. 87 [(Ga. Code §59-806(4)] violates defendant's right to equal protection under the law, since it arbitrarily singles out capital cases as cases in which the State is permitted to exclude potential jurors because of their views on punishment.

8.

If the Court restricts voir dire of the defense on the issues of punishment or questions of law but allows use by the State of the death qualification voir dire question found

at Georgia Laws 1853-54, p. 87 [(Ga. Code §59-806(4)], thereby affording the State an advantage in jury selection, defendant will be deprived of his right to due process of law under the Fifth and Fourteenth Amendments to the United States Constitution.

9.

The death qualification voir dire question found at Georgia Laws 1853-54, p. 87 [(Ga. Code §59-806(4)] does not meet the constitutional standards of specificity and clarity in determining the views of the potential juror toward the death penalty established in Witherspoon v. Illinois, 391 U.S. 511, 522-23 (1968); Boulden v. Holman, 394 U.S. 478 (1969); Maxwell v. Bishop, 398 U.S. 262 (1970); and Miller v. State, 224 Ga. 627, 634 (1968).

WHEREFORE, defendant prays that Georgia Laws 1853-54, p. 87 [(Ga. Code §59-806(4)] be quashed as unconstitutional and that it not be applied in the course of the State's voir dire of potential jurors of his trial.

Respectfully submitted,

Robert M. Coker

ROBERT M. COKER

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

STATE OF GEORGIA	:	INDICTMENT NO. A-44518
VS.	:	MURDER
DONALD WAYNE THOMAS	:	FULTON SUPERIOR COURT

MOTION TO STRIKE AND QUASH AS UNCONSTITUTIONAL THE GEORGIA STATUTES PROVIDING FOR THE IMPOSITION OF THE DEATH PENALTY, AND THEIR APPLICATION TO THIS CASE

Now comes the defendant in the above-styled case and shows this Court the following:

1. That he is charged with MURDER;

2. That the State of Georgia acting by and through the district attorney for said judicial district in the above-styled matter has stated that in the event the defendant is found guilty, he will request that the death penalty be imposed.

3. In the event that defendant is found guilty, the state may rely on Georgia Laws 1973, pp. 159, 163 (Ga. Code §27-2534.1)

4. That said statute should be quashed and held unconstitutional in that it violates the constitutional prohibition against the use of cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States and the rule of law espoused and mandated in Furman v. Georgia, 408 U.S. 238, 33 L.Ed.2d. 346, 92 S.Ct. 2726 (1972).

5. Georgia Laws 1973, pp. 159, 163 (Ga. Code §27-2534.1) is discretionary and is applied discriminatorily against certain classes of defendants in violation of the due process and equal protection clauses of Art. I, Sec. I, Pars. II and

IN OPEN COURT, THIS THE
3rd of Oct 1979
Lula R Barber

S02 204

III of the Georgia Constitution (Ga. Code §§2-102, 2-103) and the Fourteenth Amendment to the United States Constitution.

6. The categories of aggravating circumstances in Georgia Laws 1973, pp. 159, 163 (Ga. Code §27-2534.1) are unreasonable and arbitrary in violation of the equal protection clause of Art. I, Sec. I, Par. II of the Georgia Constitution (Ga. Code §2-102), and of the Fourteenth Amendment to the United States Constitution.

7. Georgia Laws 1974, pp. 352, 353 (Ga. Code §27-2302) allows the jury subjective discretion in applying the death penalty in violation of Furman v. Georgia, supra, and of the Eighth and Fourteenth Amendments to the United States Constitution.

8. Georgia Laws 1973, pp. 159, 165 [Ga. Code §27-2537(f)], provides for the collection of data on sentences imposed in capital felony cases after January 1, 1970, for purposes of reviewing death sentences as excessive or disproportionate or arbitrary. This statutory check against arbitrary and discriminatory application of the death penalty is not being complied with, hereby depriving defendants sentenced to death of an effective or adequate review of their sentence in violation of due process of law.

WHEREFORE, defendant prays that he be allowed to present evidence in support of each and every allegation included in this original Motion and that this Court quash and hold unconstitutional the Georgia Laws allowing the imposition of the death penalty.

Respectfully submitted,

Robert M. Coker

ROBERT M. COKER
Attorney for Defendant

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the District Attorney with a copy of this motion.

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IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

THE STATE OF GEORGIA	)	
	)	
vs.	)	INDICTMENT NO. A-44518
	)	
DONALD WAYNE THOMAS	)	
	)	

TO: The Judge of Said Count and
the Attorney of Record for the Defendant.

NOTICE OF AGGRAVATING CIRCUMSTANCES

Pursuant to the provisions of the General Acts and Resolutions, Acts of 1973 Volume 1, Pages 164 and 165, Code Section designated by the Act as 27-2534.1 and other pertinent sections of said Act, the undersigned, as District Attorney, submits to the Court and said defendant that the State contends and expects to prove in said case that the defendant committed the aforesaid crime under the following aggravating circumstance to-wit:

- 1 -

The offense of murder was outrageously ~~and~~ wantonly vile, horrible ~~and~~ inhuman, in that it involved torture and depravity of mind. Georgia Code Ann. § 27-2534.1(7).

This 22 day of October, 1979.

Carole E. Wall

CAROLE E. WALL
Assistant District Attorney
Atlanta Judicial Circuit

FILED IN OFFICE

OCT 22 1979

DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY GEORGIA

[COUNSEL'S OBJECTION REGARDING QUALIFICATION OF JURORS AND LACK OF OBJECTIVE STANDARD FOR DETERMINING AGGRAVATING CIRCUMSTANCES, AND COURT'S RULING:]

MR. COKER: Your Honor, I would once again renew my objection to qualification of jurors on the death penalty on the grounds that the death penalty would be in violation of the Eighth Amendment against cruel and unusual punishment.

I would further reraise my objection to the notice of statutory aggravating circumstances served upon me, and that is 27-2534.1 parenthesis 7, on the grounds that it's vague and has no objective standard to be applied in deciding whether that statutory aggravating circumstance exists.

Third, I would ask that the Court take sentencing away from the jury and impose a life sentence on Mr.Thomas, either yourself or by direction from you to the jury.

THE COURT: All right, anything further?

MR. COKER: No, sir.

THE COURT: All right, those objections will be overruled, and the Court will submit, as the statute requires, I believe, the question to the jury.

[INSTRUCTIONS PRIOR TO PENALTY PHASE OF TRIAL:]

THE COURT: Members of the jury, it is my duty as the Presiding Judge to instruct you now as to the law governing the sentencing phase of this case. The instructions given you earlier in this case and the rules of law outlined to you in this portion of the instructions apply also to your deliberations as to penalty.

The law of Georgia provides that the death penalty may be imposed in certain cases provided that the jury finds beyond a reasonable doubt that the offense for which the accused was convicted was committed under what the law describes as statutory aggravating circumstance.

In this case the State contends that the offense of murder for which the accused has been convicted was outrageously and wantonly vile, horrible and inhuman, in that it involved torture and depravity of mind.

Such a circumstance is defined as a

statutory aggravated circumstance under the law of this state.

Members of the jury, you have found this defendant guilty of the offense of murder, and you may recommend one of two sentences as punishment, if you believe beyond a reasonable doubt that the offense was committed under the aggravated circumstance or circumstances as contended by the State. If you do so find, you may recommend that this defendant be put to death by adding to your verdict, "We recommend death and find the following statutory aggravated circumstances beyond a reasonable doubt," and you must set forth in writing the aggravated circumstances which you find to exist.

If you do add that recommendation, the accused will be sentenced to be put to death in the manner provided by law, which in this state is electrocution.

The other punishment which you may recommend in this case is life imprisonment. If you do not believe beyond a reasonable doubt that this defendant should be put to death, you would return a verdict as follows:

"We recommend life." The effect of this sentence would be that the Court would sentence this accused to life imprisonment.

Now, members of the jury, you should consider all evidence submitted in both phases of the trial of this case in arriving at your verdict as to the sentence to be imposed. This would include any evidence of mitigating circumstances received by you in this case.

Members of the jury, even if you find beyond a reasonable doubt that the State has proved the existence of aggravating circumstances in this case, which would justify the imposition of a death sentence, you are not required to recommend that the accused be put to death. You would be authorized, under these circumstances, to recommend the death penalty, but you are not required to do so. The sentence to be imposed in this case is a matter entirely within your discretion, and you may provide for a life sentence for this accused for any reason that is satisfactory to you, or without any reason, if you care to do so.

The law vests the exclusive right with the jury to either make or withhold a

recommendation forthe death sentence.

Of course, if the State has failed to prove beyond a reasonable doubt that the offense was committed under the aggravated circumstances described to you, you are not authorized to recommend the death penalty. Without such a finding the death penalty cannot be imposed. In that event, your verdict would be, "We recommend life," the effect of which would be that the Court would sentence this defendant to life in prison.

The law requires that the Presiding Judge give to the jury certain instructions in writing and that the jury, if its verdict be a recommendation of death, shall designate in writing the aggravated circumstance or circumstances which it finds to exist beyond a reasonable doubt.

I will give you this written charge.

Now, Ladies and Gentlemen, in the event that you recommend the death penalty in this case, you must write out the recommendation of your findings as to any statutory aggravated circumstances in the form which I have given

to you in these instructions.

Your verdict must be unanimous; that is, agreed to by all 12 of your members. It must be in writing, dated, and signed by your foreman.

You may retired to consider your verdict.

The alternates will kindly stand aside.

(Whereupon the jury retired to the jury room, at 4:20 p.m.)

THE COURT: Any exceptions?

MS. WALL: I have none, Your Honor.

MR. COKER: Your Honor, at this time, Your Honor, however, I would specifically reserve any objections.

THE COURT: I see. All right. Any exceptions are, of course, reserved.

Do you want to look at that?

MR. COKER: Okay.

(At 5:44 p.m. the following transpired.)

THE COURT: Now, for the record, it being about 5:45 p.m., I have this question. "May you advise us the soonest a person can be released if given a life sentence?" I propose to answer that as follows: "I am not permitted to answer this question. Signed."

[WRITTEN INSTRUCTIONS TO JURY]

Members of the jury, it is my duty as the Presiding Judge to instruct you now as to the law governing the sentencing phase of this case. The instructions given you earlier in this case and the rules of law outlined to you in this portion of the instructions apply also to your deliberations as to penalty.

The law of Georgia provides that the death penalty may be imposed in certain cases provided that the jury finds beyond a reasonable doubt that the offense for which the accused was convicted was committed under what the law describes as "statutory aggravating circumstance".

In this case the State contends that the offense of murder for which the accused has been convicted was outrageously and wantonly vile, horrible and inhuman, in that it involved torture and depravity of mind.

Such a circumstance is defined as a statutory aggravated circumstance under the law of this State.

Members of the jury, you have found this Defendant guilty of the offense of murder, and you may recommend one of two sentences as punishment, if you believe beyond a reasonable doubt that the offense was committed under the aggravated circumstance or circumstances as contended by the State. If you do so find, you may recommend that this Defendant be put to death by adding to your verdict, "We recommend death and find the following statutory aggravated circumstances beyond a reasonable doubt", and you must set forth in writing the aggravated circumstances which you find to exist.

Court Exhibit 10/24/79 ag

(Court Exhibit Number 2
Page 1 of 3.)

If you do so find that recommendation, the accused will be sentenced to be put to death in the manner provided by law, which in this State is electrocution.

The other punishment which you may recommend in this case is life imprisonment. If you do not believe beyond a reasonable doubt that this Defendant should be put to death, you would return a verdict as follows: "We recommend life". The effect of this sentence would be that the Court would sentence this accused to life imprisonment.

Now, members of the jury, you should consider all evidence submitted in both phases of the trial of this case in arriving at your verdict as to the sentence to be imposed. This would include any evidence of mitigating circumstances received by you in this case.

Members of the jury, even if you find beyond a reasonable doubt that the State has proved the existence of aggravating circumstances in this case which would justify the imposition of a death sentence, you are not required to recommend that the accused be put to death. You would be authorized under these circumstances to recommend the death penalty, but you are not required to do so. The sentence to be imposed in this case is a matter entirely within your discretion, and you may provide for a life sentence for this accused for any reason that is satisfactory to you, or without any reason, if you care to do so.

The law vests the exclusive right with the jury to either make or withhold a recommendation for the death sentence.

Of course, if the State has failed to prove beyond a reasonable doubt that the offense was committed under the aggravated

(Court Exhibit Number 2
Page 2 of 3.)

circumstances described to you, you are not authorized to recommend the death penalty. Without such a finding the death penalty cannot be imposed. In that event, your verdict would be "We recommend life"; the effect of which would be that the Court would sentence this Defendant to life in prison.

The law requires that the Presiding Judge give to the jury certain instructions in writing and that the jury, if its verdict be a recommendation of death, shall designate in writing, the aggravated circumstance or circumstances which it finds to exist beyond a reasonable doubt.

I will furnish to you a written copy of this portion of the charge and I charge you that in the event that you recommend death as a penalty in this case, you must write out the recommendations and your findings as to any statutory aggravated circumstance in the form which I have given you in these instructions.

Your verdict must be unanimous -- that is, agreed to by all twelve of your members. It must be in writing, dated, and signed by your Foreman.

You may retire and complete your verdict.

(Court Exhibit Number 2
Page 3 of 3.)

May I ask you during the moment a person can be released if given a life sentence?

I AM NOT PERMITTED TO ANSWER THIS QUESTION.

RESPECTFULLY

(Court Exhibit Number 1)

Court Exhibit 10/29/79 dff

We, the jury, reommend death and Find the following statutory aggravated circumstances beyond a reasonable doubt: that choking and strangling of a 9 year child causing axphyxiation by the defendant was outregously & wantonly vile, horrible and inhuman in that it involved torture and depravity of mind,

FILED IN OPEN COURT, THIS THE
24 day of October 1979
Dara A. Jacobs
Deputy Clerk

Ed Brannan
Foreman
10/24/79

BOOK 674 PAGE 13

Report of the Trial Judge

of the

NOV-6 1979
Mattie Tolson
DEPUTY CLERK SUPERIOR CO.
FULTON COUNTY GEORGIA

Superior Court of FULTON County, Georgia

The State vs. DONALD WAYNE THOMAS
(A case in which the death penalty was imposed)

A-4451

A. Data Concerning the Defendant

Name THOMAS DONALD WAYNE 2. Date of Birth 4 / 7 / 19
Last First Middle No. Day Ye

Social Security Number 252 04 7413
Sex M [✓] F [ ] 5. Marital Status: Never Married [✓]
Married [ ]
Divorced [ ]
Spouse Deceased [ ]

Children
(a) Number of children NONE
(b) Ages of children: 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18
(Circle age of each child)

Father living: Yes [ ] No [✓] If deceased, give date of death UNKNOWN
Mother living: Yes [✓] No [ ] If deceased, give date of death
Number of children born to parents
Education--Highest Grade Completed: 1 2 3 4 5 6 7 8 (9) 10 11 12 13 14 15 16
(Circle one) [college

Intelligence Level: (IQ below 70) Low [ ] "BORDERLINE", PER PSYCHIATRIST REPORT
(IQ 70 to 100) Medium [ ]
(IQ above 100) High [ ]

Psychiatric Evaluation Performed: Yes [✓] No [ ]
If performed is defendant:
a. Able to distinguish right from wrong? [ ] [ ]
b. Able to adhere to the right? [ ] [ ]
c. Able to cooperate intelligently in his own defense? [ ] [ ]
If examined, were character or behavior disorders found? Yes [ ] No [ ]
(If answer is yes, please elaborate)

SEE ATTACHED CORRESPONDENCE RELATIVE TO THREE SEPARATE EVALUATIONS.

What other pertinent psychiatric [and psychological] information was reveal

NONE

Prior work record of defendant:

	Type Job	Pay	Dates Held	Reason for Terminati
a.	KITCHEN HELPER		UNKNOWN	UNKNOWN
b.				
c.				
d.				
e.				

*A separate report must be submitted for each defendant sentenced to death.

905 941

Was the case tried with or without jury? With [✓] Without [ ]

How did the defendant plead? Guilty [ ] Not guilty [✓]

C. Offense Related Data

Capital Offense for Which Penalty Imposed:

a. Treason . . . . . [ ]
b. Murder . . . . . [✓]
c. Kidnapping for Ransom . . . . . [ ]
d. Kidnapping where Injury Results . . [ ]
e. Aircraft Hijacking. . . . . [ ]
f. Rape . . . . . [ ]
g. Armed Robbery . . . . . [ ]

Were other offenses tried in the same trial? yes [ ] no [✓]

If other offenses were tried in the same trial list those offenses.

a. _____

b. _____

c. _____

d. _____

If tried with jury, did the jury recommend the death sentence?
Yes [✓] No [ ]

Statutory aggravating circumstances found: Yes [✓] No [ ]

Which of the following statutory aggravating circumstances were instructed and which were found?

		Instructed	Found
a.	(1) The offense of murder, rape, armed robbery, or kidnapping was committed by a person with a prior record of conviction for a capital felony, or	[ ]	[ ]
	(2) The offense of murder was committed by a person who has a substantial history of serious assaultive criminal convictions.	[ ]	[ ]
b.	(1) The offense of murder, rape, armed robbery, or kidnapping was committed while the offender was engaged in the commission of another capital felony or aggravated battery or	[ ]	[ ]
	(2) The offense of murder was committed while the offender was engaged in the commission of burglary or arson in the first degree.	[ ]	[ ]
c.	The offender by his act of murder, armed robbery, or kidnapping knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person.	[ ]	[ ]

d. The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value. [ ] [ ]

e. The murder of a judicial officer, former judicial officer, district attorney or solicitor or former district attorney or solicitor during or because of the exercise of his official duty. [ ] [ ]

f. The offender caused or directed another to commit murder or committed murder as an agent or employee of another person. [ ] [ ]

g. The offense of murder, rape, armed robbery, or kidnapping was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim. [✓] [✓]

h. The offense of murder was committed against any peace officer, corrections employee or fireman while engaged in the performance of his official duties. [ ] [ ]

i. The offense of murder was committed by a person in, or who has escaped from the lawful custody of a peace officer or place of lawful confinement. [ ] [ ]

j. The murder was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of himself or another. [ ] [ ]

. List nonstatutory aggravating circumstances indicated by the evidence, if any.

a. PRIOR CONVICTIONS OF APRIL 16, 1979, FOR

b. CHILD MOLESTATION (A-43421 FULTON COUNTY)

c. AGGRAVATED ASSAULT WITH INTENT TO RAPE

d. (A-44261 FULTON COUNTY) UPON PLEAS OF GUILTY

. Was there evidence of mitigating circumstances? Yes [ ] No [✓]

. If so, which of the following mitigating circumstances was in evidence?

a. The defendant has no significant history of prior criminal activity. [ ]

b. The murder was committed while the defendant was under the influence of extreme mental or emotional disturbance. [ ]

c. The victim was a participant in the defendant's homicidal conduct or consented to the homicidal act. [ ]

d. The murder was committed under circumstances which the defendant believed to provide a moral justification or extenuation for his conduct. [ ]

e. The defendant was an accomplice in a murder committed by another person and his participation in the homicidal act was relatively minor. [ ]

f. The defendant acted under duress or under the domination of another person. [ ]

g. At the time of the murder, the capacity of the defendant to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication. [ ]

h. The youth of the defendant at the time of the crime. [✓] (No evidence except appearance of accused)

i. Other.
Please explain if (i) is checked _____
NONE

If tried with a jury, was the jury instructed to consider mitigating circumstances? Yes [✓] No [ ]

Does the defendant's physical or mental condition call for special consideration? Yes [ ] No [✓]

Although the evidence suffices to sustain the verdict, does it foreclose all doubt respecting the defendant's guilt? Yes [✓] No [ ]

Was the victim related by blood or marriage to defendant? Yes [ ] No [✓]

If answer is yes, what was the relationship? _____

Was the victim an employer or employee of defendant?
No [✓]
Employer [ ]
Employee [ ]

Was the victim acquainted with the defendant?
No [ ]
Casual Acquaintance [ ] } UNCLEAR
Friend [ ]

Was the victim local resident or transient in the community?
Resident [✓]
Transient [ ]

Was the victim the same race as defendant? Yes [ ] No [✓]

Was the victim the same sex as the defendant? Yes [✓] No [ ]

Was the victim held hostage during the crime?
No [ ] UNKNOWN
Yes - Less than an hour [ ]
Yes - More than an hour [ ]

Was the victim's reputation in the community:
Good [ ]
Bad [ ]
Unknown [✓]

Was the victim physically harmed or tortured? Yes [✓] No [ ]
If yes, state extent of harm or torture: _____
LACERATION TO HEAD; STRANGULATION MARKS ON NECK (CAUSA MORTIS)

What was the age of the victim? 4 YEARS OLD

If a weapon was used in commission of the crime was it?

No weapon used	[✓]
Poison	[ ]
Motor Vehicle	[ ]
Blunt Instrument	[ ]
Sharp Instrument	[ ]
Firearm	[ ]
Other _____	[ ]

Does the defendant have a record of prior convictions? Yes [✓] No [ ]

If answer is yes, list the offenses, the dates of the offenses and the sentences imposed?

Offense	Date of Offense	Sentence Imposed
a. CHILD MOLESTATION	12/31/78	YOUTHFUL OFFENDER
b. AGGRAVATED ASSAULT	4/6/79	~~AGG. ASSAULT~~
c. WITH INTENT TO RAPE		YOUTHFUL OFFENDER
d. (SENTENCED ON 4/18/79, TO RUN CONCURRENTLY)		

Was there evidence the defendant was under the influence of narcotics or dangerous drugs at the time of the offense? Yes [ ] No [✓]

Was the defendant a local resident or transient in the community?

Resident [✓]
Transient [ ]

D. Representation of Defendant *

Date counsel secured MAY 14, 1979

How was counsel secured? a. Retained by defendant [ ]
b. Appointed by Court [✓]

If counsel was appointed by court was it because
a. Defendant unable to afford counsel? [✓]
b. Defendant refused to secure counsel? [ ]
c. Other (explain) _____

How many years has counsel practiced law?
a. 0 to 5 [ ]
b. 5 to 10 [✓]
c. over ten [ ]

What is the nature of counsel's practice? (PUBLIC DEFENDER)
a. Mostly civil [ ]
b. General [ ]
c. Mostly criminal [✓]

Did the same counsel serve throughout the trial? Yes [✓] No [ ]

If not, explain in detail _____

(If more than one counsel served answer the above questions as to each counsel and attach to this report.)

E. General Considerations

Was race raised by the defense as an issue in the trial? Yes [ ] No [✓]

Did race otherwise appear as an issue in the trial? Yes [✓] No [ ]

What percentage of the population of your county is the same race as the defendant?

a. Under 10% . . . . . [ ]
b. 10 to 25% . . . . . [ ]
c. 25 to 50% . . . . . [✓]
d. 50 to 75% . . . . . [ ]
e. 75 to 90% . . . . . [ ]
f. Over 90% . . . . . [ ]

Were members of defendant's race represented on the jury? Yes [✓] No [ ]

If not, was there any evidence they were systematically excluded from the jury? Yes [ ] No [✓]

Was the jury instructed to exclude race as an issue? Yes [ ] No [✓]

Was there extensive publicity in the community concerning this case? Yes [✓] No [ ]

Was the jury instructed to disregard such publicity? Yes [ ] No [✓]
(SEQUESTERED ENTIRE TIME)

Was the jury instructed to avoid any influence of passion, prejudice, or any other arbitrary factor when imposing sentence? Yes [ ] No [✓]

Was there any evidence that the jury was influenced by passion, prejudice, or any other arbitrary factor when imposing sentence? Yes [ ] No [✓]

If answer is yes, what was that evidence? _____

In your opinion, was the death sentence imposed in this case appropriate? Yes [✓] No [ ]

General comments concerning your answer: UNEXPLAINED STRANGULATION OF 9-YEAR OLD CHILD; BRUTALITY TO CHILD'S CORPSE.

F. Chronology of Case

		Elapsed Days
Date of Offense	APRIL 19, 1979 (REAL INDICTMENT PROBABLY 4/11/79)	
Date of Arrest	APRIL 20, 1979	1
Date Trial Began	OCTOBER 22, 1979	155
Date Sentence Imposed	OCTOBER 25, 1979	3

Date post trial motions ruled on (WITHDRAWN)

Date Trial Judge's Report Completed

*Date received by Supreme Court

*Date sentence review completed

*Total elapsed days

*To be completed by Supreme Court

This report was submitted to the defendant's counsel for such comments as he desired to make concerning the factual accuracy of the report, and

1. His comments are attached (✓)
2. He stated he had no comments ( )
3. He has not responded ( )

Nov 5, 1979
Date

Judge, Superior Court of

FULTON County

Grady Memorial Hospital

June 4, 1979

80 Butler Street, SE, Atlanta, Georgia 30303, Telephone 404 659-1212

J W Preston Jr
Executive Director
Asa G Yancey M D
Medical Director
Weston D Bergman Jr
Assistant Director
Administrative Services
Thomas L Collier
Assistant Administrator
Hughes Spalding Pavilion
T B Garner Jr
Assistant Director
Administrative Services
Frank K Lawlong
Assistant Director
Professional Services
Robert L Parrish Jr
Assistant Director
Ambulatory Care
E R White
Assistant Director
Fiscal Affairs
Charles H Wilson Jr
Administrator
Hughes Spalding Pavilion
Mary F Woody, R N
Assistant Director
Director of Nursing

To cal 6-25

The Honorable Charles L. Weltner, Judge
Fulton County Superior Court
Atlanta Judicial Circuit
136 Pryor Street, SW
Atlanta, Georgia 30303

Re: Mr. Donald Wayne Thomas

Dear Judge Weltner:

Mr. Donald Wayne Thomas, Indictment #A-44518, was evaluated on June 1, 1979 pursuant to a court order received on May 23, 1979. The following comments reflect a summary of the observations obtained during the course of the interview with Mr. Thomas. There was no additional history or background information available at the time of the evaluation.

PURPOSE OF EVALUATION: Mr. Thomas was informed that the evaluation had been requested by the court and that a summary of observations would be forwarded to the court for its potential use in the disposition of his case. In response to a question regarding his understanding of the charges against him, he stated "I turned myself in on an assault case and they came out here and said I killed a little white boy."

MENTAL STATUS EXAMINATION: Mr. Thomas presented as an alert, rather slender black male dressed in an institutional green jumpsuit, unkempt in his appearance and exhibiting poor personal hygiene. He sat rigidly in his chair staring past the examiner and demonstrated little spontaneity in response to questions. He stated that he had no idea of the month or the day and when asked the year he acknowledged his identity and stated that "I'm in the jail, big rock jail in Atlanta." His speech was characterized by tangential to loose associations, however, he denied experiencing delusional ideations and/or perceptual distortions in the form of either auditory of visual hallucinations. His affect was markedly flattened and his mood was depressed, without evidence of overt suicidal or homicidal ideation. As the interview progressed, and he was questioned more closely regarding his current mental status, he became increasingly restless and agitated, eventually ceasing to respond to questions while rocking back and forth in the chair and rubbing his genitals with his hands. His objective judgment was determine to be significantly impaired as a result of his markedly inappropriate behavior. His insight was considered to be nil. As a result of his inability to respond to questioning, the clinical interview was terminate

I was unable to elicit any substantial family or personal history as a result of his mental status, however the above noted observations are clearly indicative of a diagnosis of Schizophrenia. In the absence of history to the contrary, I must assume that this psychotic behavior is a manifestation of an acute process. Clinical recommendations would include the transfer of Mr. Thomas to an inpatient psychiatric facility in the interest of eliminating his psychotic symptoms. He was placed on Thorazi

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DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY GEORGIA

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50 mgs. twice a day at the close of the interview.

FORENSIC CONSIDERATIONS: Mr. Thomas appeared aware of the charges against him, however as a result of his psychotic state, he did not appear to appreciate his role in the proceedings pending before him nor was he able to communicate effectively with this examiner. It is my impression that Mr. Thomas, as a result of psychotic decompensation, is unable to actively participate in the legal proceedings against him and is so substantially impaired as a result of psychiatric symptoms as to be unable to assist his attorney in the preparation and implementation of his defense.

I am unable to offer an opinion regarding his mental status at the time of the alleged offenses, as his state of disorganization was of such a degree that he was unable to offer any coherent statements regarding the offense.

Respectfully,

Lloyd T. Baccus, M.D.
Director, Inpatient Psychiatry
Psychiatry & Law Service

LTB:reb

cc: Ms. Carole E. Wall
Asst. District Attorney

Mr. Robert M. Coker
Public Defender

SHELDON B. COHEN, M. D.
804 PEACHTREE MEDICAL BUILDING
401 PEACHTREE STREET, N. E.
ATLANTA, GEORGIA 30308
Telephone 523-6138

August 8, 1979

Honorable Charles L. Weltner
Judge, Superior Court
Atlanta Judicial Circuit
Fulton County Courthouse
Atlanta, Georgia 30303

Re: Donald Wayne Thomas
Indictment No. A-44518

Dear Judge Weltner:

Pursuant to your order of 7 August 1979, Mr. Thomas, who is accused of murder, was seen in psychiatric consultation to determine his capacity to cooperate meaningfully with counsel and to stand trial.

Mr. Thomas was brought to my office ahead of time by two Sheriff's deputies. He sat quietly in the waiting room until I called him. He is a 19 year old, single, Negro male who apparently had been employed regularly as an unskilled laborer in a restaurant for several years.

I explained the purpose of the interview and asked him what he understood it to be and he said, "You are supposed to be a doctor and they say I am crazy, I reckon." However, he said he didn't think he was crazy. He said that he had been in jail for some time, having given himself up "for an assault case." He said that he knew he had done something wrong and he wanted to get it over with.

When asked for details of the assault charges, he said that it was over with, that it was in the past and he did not want to talk about it. When asked about murder charges, he stated that he had been in court on the assault charges and that someone telephoned the court saying that he had committed murder, that they went out and looked for the body and found it. He said the call must have been from someone who did not like him and that he did not have anything to do with this incident, that he had been in jail at the time. He continually denied knowing anything about the murder of a nine year old white boy and strongly implied that many of his difficulties were because his ex-girl friend, Linda Cook, was angry with him and would do anything to hurt him. He said this was because of urinary incontinence present for seven years and that she and others made fun of him because of this.

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DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY GEORGIA
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He was able to give me fundamental, historical information about his mother, four brothers and his work history.

During the interview he was at times angry, negativistic and provocative; for example, smoking a cigaret in the waiting room despite a sign on the door asking people to not smoke. He initially seemed to be pretending not to understand or comprehend anything that was asked of him; for example, when asked if he would like a Coca-Cola or coffee, he looked up and said, "What is that?" Later, as he began talking and became less defensive it was quite apparent that he was very much aware of such phenomenon and he asked if he could have a piece of candy which he noted in a jar in my office.

The interview conducted by Dr. Baccus in early June showed apparentl quite different behavior, so that he seemed unresponsive to simple, every day questions. He apparently was placed on a tranquilizer (Thorazene 100 mgs. daily) and this may account for the difference in manner and behavior at this time. It is of course also possible that he may have simulated more in the previous interview than he did today.

At this time I cannot arrive at either a definitive diagnosis or answer the questions as to his mental capacity to assist in his own defense and to stand trial. There is conflicting information from the Grady interview and that which I obtained today. Consequently, I would recommend extended observation at Central State Hospital in order to clarify these factors.

Thanking you for asking me to see Mr. Thomas, I am

Sincerely,

Sheldon B. Cohen

Sheldon B. Cohen, M. D.

SBC:hcm
Encl.

FORENSIC SERVICES DIVISION

CENTRAL STATE HOSPITAL

Milledgeville, Georgia 31061

September 24, 1979

A 4451

Honorable Charles L. Weltner
Judge, Superior Court
Atlanta Judicial Circuit
Courthouse
Atlanta, Georgia 30303

Re: Thomas, Donald Wayne
Case No. 228,112
Fulton County
Binion 2 South

Dear Judge Weltner:

Mr. Donald Wayne Thomas was admitted to the Forensic Services Division of Central State Hospital on August 27, 1979 by Order of your Court. We understand that he is charged with Murder. Your Order states that the defendant may be presently incompetent to participate in his defense and that because of conflicting reports from two other psychiatrists, further evaluation by the court is requested.

The physical examination was unremarkable. Neurological examination including brain scan, skull series, electroencephalogram and neurological consultation are all within normal limits. All routine laboratory procedures were within normal limits. The chest x-ray was negative. Although Mr. Thomas has had vague urinary complaints, his urinalysis has been within normal limits.

On admission, Mr. Thomas was noted to be tense, anxious and nervous. His speech was logical, relevant, coherent and goal directed. However, he was somewhat guarded and did not volunteer any information. His psychomotor activity was a little decreased and he spoke in a very low tone. His affect was somewhat flat. He was partially oriented. He denied hallucinations, delusions and suicidal thoughts. Psychological testing reveals he functions in the Borderline range of intelligence. Personality testing suggests the presence of a thought disorder, which resembles that of a schizophrenic process. Based on our examination, evaluation, and information available to us, he has been given the diagnosis of Latent Schizophrenia. He gives no other history of psychiatric treatment.

Based on our examination and evaluation, we have concluded that he is aware of the charge pending against him and the possible consequences. He is able to relate to his attorney in the preparation of his defense. Therefore, we consider him competent to stand trial.

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FULTON COUNTY GEORGIA

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As to his degree of criminal responsibility, it is our opinion that he is able to distinguish between right and wrong, and was not acting under the influence of a compulsive delusion which overmastered his will to resist committing the alleged offense.

Please send a duly authorized person for him at your earliest convenience.

Very truly yours,

Jose M. Delatorre, M.D.
Medical Director
Forensic Services Division

JMD:id

cc: Honorable Lewis R. Slaton (Enclosed)
Defense Counsel (Enclosed)

BOOK 895 PAGE 853 BOOK 887 PAGE 34

STATE OF GEORGIA	I	INDICTMENT NO. A-44518
V.	I	MURDER
DONALD WAYNE THOMAS	I	FULTON SUPERIOR COURT

DEFENSE COUNSEL'S COMMENTS TO
POST-SENTENCING REPORT OF TRIAL JUDGE

1. Item F-4 (page 6):

The sentence was imposed on October 24, 1979, rather than October 23, 1979.

2. Items C-11, E-12:

Defense Counsel feels that the evidence fails to foreclose all doubt as to Defendant's guilt and further, that imposition of the death penalty was inappropriate.

The evidence against Defendant was entirely circumstantial. The two witnesses whose testimony was essential in connecting Defendant with the alleged crime were shown to have personal interests in testifying for the State and against Defendant.

Linda Cook, Defendant's girl friend, was charged with Concealing Death (Ga. Code Ann. §26-1104), but was never prosecuted in Juvenile, State, or Superior Court, and was in fact, granted immunity from prosecution on October 23, 1979. This fact was made a part of the record herein through her attorney's statement, agreed to by the Assistant District Attorne and through Linda Cook's testimony on cross-examination. Furthe more, the record will reflect that Linda Cook was held in detention in the Fulton County Juvenile Court from April 19 or 20, 1979, until October 12, 1979, when she was released on a Writ of Habeas Corpus. One condition of her release was that she maintain daily contact with the District Attorney's Office. On cross-examination, she stated that she thought she would be returned to Juvenile detention if she did not maintain such daily contact.

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DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY GEORGIA

Additionally, Linda Cook's testimony differed in many respects between direct and cross-examination at trial, between her testimony at trial and her testimony at Defendant's preliminary hearing, between her testimony under oath at both proceedings and the written statement she made to police, and between her statement and testimony and the trial testimony of at least two police officers.

The other witness whose testimony was essential to the State's case was Enzor Lowe, Defendant's stepfather. Mr. Lowe was arrested on a Material Witness warrant at 2:00 a.m., Thursday October 18, 1979, and kept at the Fulton County Jail until after his testimony. His trial testimony was equivocal and only after he reviewed his statement to police three times did his testimony agree with his statement. Furthermore, Mr. Lowe admitted on cross-examination that he had been drinking when he made his statement to police.

For the foregoing reasons, Counsel submits that some doubt must remain as to Defendant's guilt and that imposition of the death penalty was not justified.

Respectfully submitted,

Robert M. Coker

ROBERT M. COKER
Attorney for Defendant

707 Title Building
30 Pryor St., SW
Atlanta, Georgia 30303
572-3286

VS.

DONALD WAYNE THOMAS

NO. 1518

FULTON SUPERIOR COURT

INDICTMENT AND CONVICTION FOR:

WHEREAS THE JURY in the above stated case returned the following verdict: " We, the jury, recommend death and find the following statutory aggravated circumstances beyond a reasonable doubt; that choking and strangling of a 9 year child causing axphyxiation by the defendant was outrageously & wantonly vile, horrible and inhuman in that it involved torture and depravity of mind.

IT IS CONSIDERED, ORDERED AND ADJUDGED by the Court that the defendant, DONALD WAYNE THOMAS, be taken from the bar of this Court to the common jail of Fulton County, there to be safely kept until his removal to the Georgia State Prison in Tatnall County for the purpose of the execution of this sentence in the manner prescribed by law.

IT IS FURTHER ORDERED AND ADJUDGED BY the Court that the Sheriff of Fulton County, or his lawful deputy, together with such deputies as he may deem necessary (the number of guards to be approved by the Presiding Judge, or the Ordinary of said County) shall convey the said DONALD WAYNE THOMAS, to the Georgia State Prison in Tatnall County not more than twenty days and not less than two days prior to the 1st day of December 19 79, and there deliver him to the Director of Corrections to be electrocuted as provided by law, at such Penal Institution as may be designated by said Board.

AND IT IS ORDERED AND ADJUDGED by the Court that the Warden of the penitentiary of the State of Georgia shall execute the said DONALD WAYNE THOMAS, by electrocution, as provided herein and by law, in private, witnessed only by his counsel, relatives; and such clergymen and friends as he may so desire, within the walls of said institution, on the 1st day of December, 19 79, between the hours of 10:00 o'clock A.M., and 2:00 o'clock P.M.

AND MAY GOD HAVE MERCY ON his SOUL.

This the 24th day of October, 19 79

NOT. OCTOBER 25, 1979

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OCT 25 1979
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GEORGIA

JUDGE, SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT

District Attorney
Atlanta Judicial Circuit

BOOK 674 PAGE 10

(ENTERED ON OCT 25, 1979 TO CORRECT ERRONEOUSLY ONTED

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

THE STATE : CASE NO. A-44518

vs. :

DONALD WAYNE THOMAS : MOTION FOR NEW TRIAL

Comes now DONALD WAYNE THOMAS, Defendant in the above-styled case, and moves the Court to set aside the verdict entered in the above-styled case on October 24, 1979 and the judgment and sentence entered on October 25, 1979 and grant him a new trial for any or all of the following reasons:

1.

The verdict, judgment and sentence are contrary to law.

2.

The verdict, judgment and sentence are contrary to the evidence.

3.

The verdict, judgment and sentence are contrary to the weight of the evidence.

4.

The Court erred by excusing for cause prospective jurors who were opposed to the death penalty.

5.

There was not sufficient aggravating circumstances to justify imposing a sentence of death.

WHEREFORE, defendant prays that the Court set aside the verdict, judgment and sentence in the above styled case and grant defendant a new trial.

Jack Dorsey, Atty. for defendant

Suite 540
148 International Blvd., N.E.
Atlanta, Ga. 30303
588-0241

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NOV 23 1979

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

THE STATE) INDICTMENT NO. A-44518

VS.)

DONALD WAYNE THOMAS) O R D E R

The Motion for New Trial is overruled on all grounds.

This 14th day of January, 1980.

CHARLES L. WELTNER
JUDGE, S.C., A.J.C.

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DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GEORGIA

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[Death-qualifying voir dire of Ms. Frances Ogletree:]

[THE COURT:] Give your name, please, ma'am.

THE JUROR: Frances Ogletree.

THE COURT: Mrs. Ogletree, the Court inquires, are you conscientiously opposed to capital punishment?

THE JUROR: Yes.

THE COURT: Would you automatically vote against the imposition of capital punishment without regard to any evidence that might develop in the trial of this case if you were selected as a juror?

THE JUROR: I believe I would go on the evidence.

THE COURT: Well, the question is, would you automatically vote against capital punishment without regard to any evidence that might be developed at the trial of the case?

THE JUROR: No. No.

THE COURT: Would your attitude toward the death penalty prevent you from making any impartial decision as to the defendant's guilt, again assuming that you are selected as a juror?

THE JUROR: I don't quite understand that, Judge Weltner.

THE COURT: Well, you said that you were opposed to capital punishment.

THE JUROR: Right.

THE COURT: I am asking you whether that feeling on your part would prevent you from making an impartial decision as to the question

of guilt or innocence?

THE JUROR: I'm afraid it would.

THE COURT: All right.

MS. WALL: Your Honor, I move that she be excused for cause.

THE COURT: Mr. Coker?

MR. COKER: I object, on the grounds previously stated.

THE COURT: All right, ma'am, you may be excused. Please check back on the fourth floor and see if they need you any more.

[Death-qualifying voir dire of Joyce Beachum:]

THE CLERK: Mrs. Joyce Beachum.

THE COURT: Mrs.Beachum, the Court inquires of you as follows. Are you conscientiously

opposed to capital punishment?

THE JUROR: Opposed? I don't know.

THE COURT: Ma'am --

THE JUROR: I never thought about it.

THE COURT: Let me ask you this question. Would you automatically vote against the imposition of a death sentence without regard to any evidence that might be developed in the trial of the case, if you were a juror in a case?

THE JUROR: No.

THE COURT: Would your attitude toward the death penalty prevent you from making any impartial decision as to the question of guilt or innocence?

THE JUROR: No.

BY MS. WALL:

Q Mrs. Beachum, you say you have never considered capital punishment?

A No. You read about it, you think about it, but unless it affects you, you know, you never just really, you know, think about it real deep.

Q All right, ma'am. Could you consider a case so horrible that you would write out a death sentence on a person, if you were the foreman of a jury?

A Could I do what now?

Q Could you consider the circumstances, the circumstances of the murder were such, that if you were foreman of the jury you could write out, we the jury sentence the defendant to death?

A No.

Q You could not write out the death sentence?

A I don't think so.

Q Ma'am, are there any circumstances so horrible that you could consider the death sentence?

THE COURT: Excuse me, consider writing it out.

BY MS. WALL:

Q Consider imposing it?

A Imposing it. Well, I guess I could consider imposing it. You mean, help carrying it out, right?

Q No. I mean, can you vote for the death sentence? Could you go in that jury room and vote for the death sentence?

A Oh, no.

MS. WALL: Your Honor, I'd ask that she be excused for cause.

THE COURT: You want to inquire further?

MR. COKER: Yes, Your Honor.

BY MR. COKER:

Q Mrs. Beachum, are you employed outside the

home?

A Yes.

Q In what capacity?

A I am a resident manager for Paradise Apartments.

Q And where is that located?

A Well, the base office is on 504 Fifth Street, but I work on Hollywood Road.

Q Now, are you conscientiously opposed to capital punishment?

A Opposed to it?

Q Right.

A Okay. You are saying am I against capital punishment?

Q Right.

A Yes, I am against it.

MR. COKER: Your Honor, I request the Court to reiterate the second and third qualifying questions on that, before making a ruling on whether she should be struck for cause.

THE COURT: Now, Madam Juror, listen very carefully to these questions here. If there is anything about the question you don't understand, you ask me. We have got all day to answer the questions, so don't get nervous or

feel like anybody is rushing you. What I have got to know under the law is this. Regardless of what the evidence might be in a case, is your feeling about capital punishment such that you would automatically vote against the death sentence, no matter what the evidence might be?

THE JUROR: Okay, I don't like the death sentence, and I just feel that there could be another way of doing things, so --

THE COURT: Now, answer my question. Notwithstanding that --

THE JUROR: All right.

THE COURT: -- and regardless of what the evidence in the case might be, is your view of the death penalty such that under no circumstances would you ever vote to impose the death penalty?

THE JUROR: No.

THE COURT: Are you telling me that you can conceive of situations wherein you would vote to impose the death penalty?

THE JUROR: Yes.

THE COURT: And we are talking about voting to send someone to the electric chair to be electrocuted.

THE JUROR: Mmh-hmm.

THE COURT: Now, ma'am, answer this question. Is your attitude toward the death penalty as you have expressed it today, is that such as would prevent you from making an impartial decision as to the question of whether or not the defendant is guilty or innocent, independent of punishment?

THE JUROR: I think I could make a fair judgment.

THE COURT: About guilt or innocence?

THE JUROR: About guilt or innocence.

THE COURT: All right, Ms. Wall.

MS. WALL: Your Honor, I'd ask that she be excused for cause.

MR. COKER: I object to that, Your Honor.

MS. WALL: She has stated, based upon my question, that she could not go in there and vote for the death penalty. That is what she told me in her answer.

THE COURT: Well, let me inquire further. Now, you recall the question Ms. Wall is talking about. Do you want to comment on that? Either your mind is such that there are cases where you could vote for the death penalty, or

there is no possible case where you could vote for the death penalty, and the Court has got to know which one of those is yours.

THE JUROR: Okay. Now, if we find the person -- if all evidence show that he was guilty, then I could render a judgment on that.

THE COURT: On whether the defendant is guilty?

THE JUROR: Yes.

THE COURT: Now, assume that you find the defendant guilty, would you be able, in any case, to vote for the imposition of a penalty of execution; that is, to impose the death penalty?

THE JUROR: Well, I guess if that's the alternative, yeah, if that's the last thing that's left.

THE COURT: You would be able to vote for a death penalty?

THE JUROR: If that's the only thing, if this is what you are asking.

THE COURT: I am asking you, ma'am, whether or not --

THE JUROR: Yes.

THE COURT: Whether or not there is any case, notwithstanding the fact that you don't like the death penalty, you think there is other means, is there any case that you can conceive that you would vote to send somebody to the electric chair to be executed?

THE JUROR: No.

THE COURT: All right, what do you say?

MS. WALL: I ask that she be excused for cause.

THE COURT: What do you say, Mr. Coker?

MR. COKER: I object to any excuse for cause.

THE COURT: Would you be good enough to wait in there just a minute, please.

(Whereupon the juror left the courtroom.)

THE COURT: Do you want to argue that, or just note your objection?

MR. COKER: Your Honor, she has --

THE COURT: I know what she has done. She has said three or four different things, but the last time she said she could not.

MR. COKER: Judge, in view of her other ambivalent answers, and the fact that it has taken a great deal of the Court's time to ask these questions, I would object to any excuse

for cause with this prospective juror. She has not categorically said that she will not impose the death penalty.

THE COURT: That is what she justsaid, Mr. Coker. That is as categoric as you can get. That is not what she said before, I agree.

MS. WALL: I ask to strike her for cause.

THE COURT: Well, I think, as a matter of fact I will strike her for cause,and I will have to do that as I understand the law. I agree with you that she is quite ambiguous about it, but when it comes down to talking about sending somebody to the electric chair to be executed her ambiguity seems to fade away. I will have to grant the motion of the State.

All right, ask the lady to come in here, please, sir.

(Whereupon the juror returned to the stand.)

THE COURT: Okay, Mrs. Beachum, the Court is going to excuse you. Thank you very much. Please check back on the fourth floor, see if they need you.

All right, Mr. Sheriff.

[Death-qualifying voir dire of Eddie Watkins:]

THE CLERK: Eddie M. Watkins.

THE COURT: Mr. Watkins, the Court asks you as follows. Are you conscientiously opposed to capital punishment?

THE JUROR: Yes.

THE COURT: Would you automatically vote against the imposition of capital punishment without regard to any evidence that might be developed at the trial of this case, if you were selected as a juror?

THE JUROR: No, I wouldn't automatically vote against it, no.

THE COURT: The Court inquires as follows. Can youconceive of a case wherein you would vote to impose capital punishment; that is, to vote to have a defendant convicted of murder, sent to the electric chair for electrocution?

THE JUROR: If the Court, you know -- no, I couldn't. No, I wouldn't do that. No, I would not.

THE COURT: All right. Would your attitude toward the death penalty prevent you from making an impartial decision as to the defendant's guilt; that is, on the question of guilt or innocence. Again, if you were selected to serve in this case.

THE JUROR: No, it would not.

THE COURT: You want to inquire?

MR. COKER: Your Honor, I'd like a clarification of your next to last question. The answer thereto.

THE COURT: I believe he said no, he could not do that. I interpret that to mean there is no case wherein he could conceive he would willingly vote to impose the death sentence. Now, if I'm incorrect --

THE JUROR: I thought you said capital punishment.

THE COURT: That is sending somebody to Reidsville to the electric chair to be executed.

THE JUROR: No, I wouldn't vote that way.

MS. WALL: Your Honor, I move he be excused for cause.

MR. COKER: Your Honor, I object for the same reason.

THE COURT: All right, you may be excused.

I think we had better explain to this jury the question that I am going to ask each of them, so that they can be thinking about that, and don't get hit, maybe, cold.

All right, we will take the next 12 and

do whatever general voir dire either of you wish to do, after putting them in the box.

[Death-qualifying voir dire of Ms. Christine Reese:]

THE CLERK: Ms. Christine Reese.

THE COURT: All right, let me ask you, ma'am, are you conscientiously opposed to capital punishment?

THE JUROR: Yes, I am.

THE COURT: Does that mean that under no circumstances would you consider voting for a death penalty?

THE JUROR: Well, I would have to hear the facts.

THE COURT: What I am asking you is this. Is your opposition to capital punishment such that there would be no case in which you would vote for capital punishment?

THE JUROR: No.

THE COURT: You want to inquire further?

MR. COKER: Judge, I'm not sure I understood her answer.

THE COURT: I think it was, no, there is not. Is that your last answer, ma'am?

THE JUROR: If I understood you to say

are there any circumstances, I would just say no to it.

THE COURT: All right. I want to ask you this. I want to ask you, if your view on capital punishment is so strong that under no circumstances, that you could conceive, would you ever consider voting for the death penalty if you were a juror? That is the question.

THE JUROR: No, my views are not that strong.

THE COURT: Well, is it such that, such that you might, under some evidence in the case, vote for the death penalty?

THE JUROR: Under extreme cases, extreme, but I don't believe in corporal punishment.

THE COURT: Well, in an extreme case, as you might view that word, would you be willing to consider voting for the death penalty, in an extreme case?

THE JUROR: I don't think I could. I don't think I could.

THE COURT: Would your view on capital punishment prevent you from making an impartial verdict on the question of whether or not the

defendant is guilty or innocent?

THE JUROR: No.

THE COURT: It would not?

THE JUROR: No, sir.

BY MS. WALL:

Q Mrs. Reese, is there any case where you yourself could go into a jury room and vote to sentence someone to the electric chair at Reidsville.

A No, ma'am.

MS. WALL: Your Honor, I ask that she be excused for cause.

THE COURT: You want to inquire further, Mr. Coker?

MR. COKER: Your Honor, at this time. I would just object.

THE COURT: Okay. Mrs. Reese, now, you can be excused. Please go back down to the fourth floor and tell them you are available for further service.

THE JUROR: All right.

THE COURT: Thank you, ma'am.

[Death-qualifying voir dire of Evelyn Thompson:]

THE CLERK: Mrs. Evelyn Thompson.

THE COURT: Mrs. Thompson, I inquire of you as follows. Are you conscientiously opposed to capital punishment?

THE JUROR: Well, I don't really know that much about it. I mean -- you mean -- explain that one more time, about capital punishment, please, sir.

THE COURT: Capital punishment means electrocution in the electric chair, imposition of the death sentence. Are you conscientiously opposed?

THE JUROR: Yes, I am.

THE COURT: Now, let me ask you this.

Would you automatically vote against the imposition of the death sentence without regard to any evidence that might be developed on the trial of the case?

THE JUROR: No.

THE COURT: Now, would your attitude toward the death penalty prevent you from making an impartial decision as to the question of guilt or innocence?

THE JUROR: I really don't know, at this point.

THE COURT: Well, let me explain to you that under the procedure of the State, in a case where the death penalty is sought, the jury first determines whether or not a defendant is guilty or innocent without considering the question of punishment. Only, of course, if the defendant is found guilty would the question of punishment be considered. Now, I am asking you, would your attitude on capital punishment render you unable to make an impartial decision as to the question of guilt or innocence?

THE JUROR: I'm afraid it would.

MS. WALL: Your Honor, I'd ask that she

be excused for cause.

MR. COKER: I object on the grounds previously stated in Court.

THE COURT: All right, Mrs. Thompson, we will excuse you. You need to be back at 9:20 with the other jurors. You will not have any further responsibility in this case.

THE JUROR: Okay, thank you.